



March 9, 2011

TO: Phil Isenberg, Chair, and Members of the Delta Stewardship Council
Joe Grindstaff, Acting Executive Director, Delta Stewardship Council

RE: Comments on the First Draft of the Delta Plan

Thank you for providing the City of Antioch the opportunity to comment on the first draft of the Delta Plan ("Plan"). After reviewing the draft Plan, Antioch has the following comments:

CHAPTER 1 – THE DELTA PLAN

p. 1-2 - The Delta is Critical to all Californians and to Delta Residents

This section of the Plan should be modified in part to read "and *in particular* to Delta Residents." Decisions affecting the Delta directly impact residents in the region who rely on the Delta for water supply, recreation and a way of life.

As also acknowledged in the Plan, the California Legislature has declared that the Delta is a natural resource of Major Significance, and yet, those living in the Delta have been largely absent from any meaningful discussions relating to the Delta. Water Code section 85300 (b) mandates the Delta Stewardship Council to consult with Federal, State and local agencies with responsibilities in the Delta to develop the Delta Plan. The Plan however fails to provide how the Council will consult with local in-Delta agencies such as Antioch in developing the Plan.

p. 1-4 – The Delta is at Risk

Declining water quality within the Delta should be addressed within the Plan as an element of risk to the Delta.

CHAPTER 5 – MANAGE WATER RESOURCES

p. 5-1

The third paragraph on page 5-1 states the Delta Ecosystem "will likely need a reasonable amount of additional water" at appropriate times and places. The next sentence in the same paragraph however states that it is "clear that improvement of the Delta-related water export system" is a "necessary condition" for ecosystem improvement. In other words, the Plan appears to be indicating that an improved water export system could potentially result in more benefit to the Delta ecosystem than increased Delta flows. Such a conclusion is premature at the least. It is also contrary to existing scientific and historic evidence showing that Delta inflow and outflow is the most important element to restoring the Delta ecosystem (see for example the SWRCB In-

Stream Flow proceedings). The BDCP process has in fact so far shown through its initial “effects analysis” that proposed improvements to the water export system could result in decreased Delta water quality, decreased Delta outflow, and the possible extinction of certain species – all contrary to the co-equal goals and the Delta Reform Act.

p. 5-3 to 5-4 – *Promote a More Reliable Water Supply*

The City is pleased to see some mention in the Plan of local and regional solutions to water supply reliability. Water supply reliability and water quality however should not be restricted to water exports and southern California. The Plan must include local and regional solutions within the Delta and such solutions could include consolidated regional diversions, substitute water agreements, and desalinization. Further, a more reliable water supply for in-Delta users will necessarily require improved water quality within the Delta (including the western Delta) and this should be included as a finding in the Plan.

With respect to the principle of “reasonable use”, it should be kept in mind that it is a dynamic principle that can change over time. For example, years ago it was considered wasteful to allow any fresh water at all in a stream to reach the ocean (*Gin S. Chow v. City of Santa Barbara* (1933) 217 Cal. 673). That policy decision based on reasonable use obviously ended up having devastating consequences to the ecosystems in California.

p. 5-5 – *Promote Options for New and Improved Water Conveyance, etc.*

This section of the Plan should include discussion and analysis of new and improved water conveyance for “in-Delta” uses to achieve the co-equal goals.

p. 5-7 – *Working Categories of Potential Policies and Recommendations (re: Management of Water Resources)*

One of the recommendations in the draft Plan is to complete the BDCP (see also p 6-7). In fact, in certain ways, the first draft of the Plan appears to be potentially setting the stage for the incorporation of the BDCP into the Plan rather than implementing the co-equal goals and other components of the law.

As Antioch has previously informed the Delta Stewardship Council, the current published evidence by way of the initial effects analysis indicates that the BDCP as presently proposed could adversely impact water quality in the Western and Central Delta by decreasing outflow and increasing salinity. Additionally, the BDCP process did not involve in-Delta stakeholders nor did it address mitigation of potential in-Delta impacts as part of the project. In fact, the BDCP process did not even respond to comments submitted by in-Delta interests such as Antioch.

As such, incorporation of the BDCP into the Delta Plan could adversely impact other implementation strategies of the Delta Plan (e.g. water quality, delta flows and ecosystem restoration) and prevent the Delta Plan from achieving the co-equal goals. The Plan therefore

must include strategies to mitigate any potential adverse impacts of the BDCP on the co-equal goals, in-delta beneficial uses, the Delta ecosystem, Delta water quality and in-Delta water rights.

CHAPTER 6 – RESTORE DELTA ECOSYSTEM

p. 6-3 – Restore or Protect Habitat

Antioch agrees that the Delta Ecosystem has been changed dramatically and that it may not be possible to consider restoring the Delta to its historic condition. However, the Plan appears to conclude that it is not even possible to restore a significant portion of the Delta Ecosystem and that the only reason the Plan even addresses this issue is that it is required by law. Hopefully, this is only a poor choice of words rather than an actual conclusion. As the City has previously pointed out, the Delta Ecosystem is not co-equal with Water Supply Reliability. The Delta Ecosystem has been subjected to 150 years of alteration, destruction and decline. It will take many years and many bold ideas from the Stewardship Council to ensure the Delta Ecosystem is anywhere near co-equal with export water supply reliability.

At a minimum, Antioch believes that the Plan should: 1) provide that no new significant export facilities of any kind should be constructed in the Delta until significant Delta restoration (including increased Delta outflows) occurs first; and 2) adopt a “do no harm” policy with respect to the existing Delta ecosystem (including salinity and outflow).

p. 6-4 – Improve Water Quality

The Plan makes a finding that restoring a healthy ecosystem may require developing a more natural salinity regime in parts of the Delta. Antioch agrees with this finding. However, as the historic and scientific evidence demonstrate (including the White Papers presented to the Council) such variability occurred in a much fresher Delta with a far greater western extent of freshwater.

p. 6-6 – Provide a More Natural Flow Regime

Antioch agrees with this finding and believes that a more natural flow regime is the single most important factor to restoring the Delta ecosystem. Providing a more natural flow regime is a critical element of restoring the natural freshwater delta. A more natural flow regime will also be vital to protecting the Delta from the predicted impacts of climate change.

CHAPTER 9 – PROTECT AND ENHANCE THE UNIQUE CULTURAL, RECREATIONAL, NATURAL RESOURCES AND AGRICULTURAL VALUES OF THE CALIFORNIA DELTA AS AN EVOLVING PLACE

Everything that is unique to the Delta as a place developed within a historically fresh water Delta. All of the values the Plan seeks to protect and enhance are threatened by declining water

quality, increasing salinity, and decreasing Delta outflow due to water exports and upstream diversions. Without improved water quality and increased Delta outflow, the uniqueness of the Delta will cease to exist.

Thank you again for allowing Antioch to provide the above comments. Again, Antioch looks forward to working with the Council in developing the Delta Plan. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Phil Harrington". The signature is fluid and cursive, with the first name "Phil" being more prominent and the last name "Harrington" written in a continuous script.

Phil Harrington
Director of Capital Improvements/Water Rights

C: Jim Jakel, City Manager
Lynn Tracy Nerland, City Attorney
Mayor and City Council